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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

International Settlement Rates )

IB Docket No. 96-261

COMMENTS OF  
THE HISPANIC-AMERICAN ASSOCIATION OF RESEARCH  
CENTERS AND TELECOMMUNICATIONS COMPANIES

INTRODUCTION

The Hispanic-American Association of Research Centers and Telecommunications Companies ("AHCiet") hereby presents the following comments to the "Notice of Proposed Rulemaking on International Settlement Rates Benchmarks" (IB Docket No. 92-261).

STATEMENT OF INTEREST

AHCiet is a non-profit association that includes approximately forty Hispanic-American telecommunications companies. Constituted in 1982, its headquarters are located in Madrid, Spain. Its objective is to promote the telecommunications development of Hispanic-American countries through cooperation among all its members.

BACKGROUND

Since 1992, the FCC has sought to reduce the accounting rates established through agreements between operators. On that date, the FCC unilaterally established a series of

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guidelines to which the new agreements on accounting rates, subscribed by foreign and U.S. operators, should adjust. Because the FCC was not satisfied with the subsequent reductions, in March 1996 it issued an unprecedented order -- without providing either notice or an opportunity to comment -- suspending settlements payments to Telintar-Argentina. The FCC subsequently issued orders that purported to retroactively lower the effective accounting rate contained in the operating agreements between certain U.S. carriers and Entel-Bolivia and Telefónica del Perú.

These orders substantially modified the legal framework for operating agreements between American and foreign carriers. This order is the first of two processes designed by the FCC to foster the competition of international telecommunication services. The second part consists of the FCC's unilateral adoption in this proceeding of "benchmarks" for accounting shares.

## **I. RELEVANT DOCUMENTS FROM INTERNATIONAL ORGANIZATIONS**

In telecommunications it is necessary to observe a series of principles established by the International Telecommunications Union (ITU). The ITU is an international organization, to which almost all the countries in the world belong, which formulates recommendations based on mutual agreement.

### **A. World Trade Organization (WTO)**

1. The WTO is in process of writing a document applicable to Telecommunications. Its last meeting was in Singapore in December 1996. Therefore, there is not yet a defined position on the matter other than the general principles established by the General Agreement on Trade Services.

2. At the end of the Uruguay Round, the “Decision Related to Negotiations on Basic Telecommunications” was adopted. Section 7 states that: “It is understood that from this very moment until the date of application of the results of the negotiation, no participant will apply any measure that affects the basic telecommunications business in a way that advantages its negotiation position and its influence in the negotiations. It is understood that the present disposition will not impede the accordance of agreements between companies and between governments on basic telecommunications services supply.” It is obvious that the FCC is not complying with this principle.
3. The FCC stated in its document that it “*will not tolerate*” violations by foreign carriers of “*its*” ISP. There is not a document, agreement, law, or recommendation of international application that makes the FCC’s policies binding on other countries or gives the FCC any enforcement authority outside the United States.
4. In order to accurately estimate the United States’ trade deficit in the telecommunications sector, the FCC should consider the income that North American telecommunications equipment providers receive from foreign telecommunications companies for the purchase of equipment and technical assistance that they provide.

**B. ITU Telecommunications Rules (“Ruling Principles”)**

1. Relations between administrations is carried out “*through mutual bilateral agreements.*”
2. Respect should always be given in each case to “*the national applicable legislation.*”
3. ITU rules are dictated on the basis of its members’ “consent,” given its character as an international organization and the range and purpose of its recommendations.
4. The measure that the FCC purports to issue is inconsistent with these basic principles that regulate the relations between administrations and/or operating companies.

**C. Recommendation D.140 (“Principles Applicable to Distribution Rates of International Telecommunication Services”)**

1. The Notice begins by quoting the 1992 version of Recommendation D.140, when the current version of the recommendation is dated September 1995 (the quotation is later amended in the Annex “Foreign Tariffed Components Prices,” Page 1, quotation 2).
2. This mistake does not seem to be fortuitous. The revised Recommendation D.140 (with its Annexes) was issued by the ITU in 1995, and provided that the 5-year transition period leading to cost-oriented accounting rates was extended until the year 2000.
3. Recommendation D.140 allows the parties to establish “asymmetrical” accounting rates. This provision is not even mentioned by the FCC, which provides a biased and incomplete interpretation of the ITU Recommendation.
4. Annex C of Recommendation D.140 expressly provides that matters regarding accounting rate reductions are to be resolved through “bilateral negotiations” by the administrations.
5. The FCC purports to extrapolate and generalize the principles of Recommendation D.300R (“Fixing of Accounting Shares in Telephone Relations between Europe and Mediterranean Basin countries”). This is improper. It is obvious that the rest of the world has totally different characteristics from these countries.

**II. PARTICULAR COMMENTS REGARDING THE FCC’S METHODOLOGY**

1. The FCC advocates the adoption of the “long term incremental cost (TSLRIC)” as a basis to establish the accounting rate “benchmarks.” This methodology should not be applied in a universal and generalized way. The regulatory authority in each country has determined the structure and model for costs calculation based on the policies dictated by the respective governments for the development and enhancement of the national network. Many governments have given special consideration to the provisions of “universal service.” In such cases, the company or companies in that country must reinvest net income from international service in domestic facilities and services.
2. The FCC recognizes that its ability to determine incremental costs is limited. As costs for each country of the world are not available, the FCC relies on each country’s public tariffs. This estimation method is

not valid because some countries establish tariffs that are not cost-based, but, rather, set prices in order to achieve service development or other policies.

3. It is arbitrary to use the tariff of an international point to point private line to estimate the per minute cost of switched traffic. It is not valid to assume that the tariff of one service can be used to establish the cost of a different service. In those countries where telecommunications markets have not been opened, governments may establish services tariffs according to particular internal considerations, such as their interest in developing specific services or guaranteeing the financing of universal service.
4. It is not valid to generalize to all the world the results of the TEUREM Recommendation D.300, which correspond to a particular geographic and political region. In addition, there are other tariff study groups considering other regions of the world, which also are being promoted by the ITU, which are in process and which include regional peculiarities.

The grouping of countries established by the FCC to determine costs is based exclusively on the Gross National Product per capita of each country, based on the information collected by the World Bank. It is not valid to use the GNP per capita of each country as the only element to estimate the international switching facilities' costs.

5. Regarding the National Extension component, the same previous considerations are relevant. It is not valid to determine the costs of the local extension based on the tariffs in the local sector, since each government may establish tariffs not oriented to costs based on particular circumstances (economic development of a region, service installation and development in border zones, etc.).

### **III. PARTICULAR CONSIDERATIONS OF INTERNATIONAL PUBLIC ORDER**

1. The FCC proposal undermines the negotiating freedom of the parties by establishing a "benchmark" to be applied by U.S. companies. The policy of establishing rigid and obligatory schedules undermines the possibility of discussion with American carriers.
2. There is no international organization to establish tariffs and accounting rates. The FCC can not unilaterally take on that role. The FCC does not have worldwide jurisdiction to impose its policies internationally.

3. The main basis relied on by the FCC for its proposal is the unfavorable payments balance caused by the imbalance in outgoing traffic from the U.S. to other countries. This situation is the direct result of the FCC's decision to authorize and support "call back" and "call reorigination" services. The FCC policy has distorted "historical" traffic relations between countries.
4. The FCC proposes a series of measures to guarantee compliance with the U.S. International Settlements Policy. This situation must be considered to be extortion by the FCC. Foreign carriers will not accept a situation in which U.S. carriers do not fulfill their contractual obligations to make settlements payments at the mutually agreed rate, but, rather, make payments at the "benchmark" or other levels.
5. American carriers, in general, have not lowered their international long distance tariffs to the public after accounting rate reductions. In the event that tariffs are reduced as a result of the new "benchmarks," the gap in tariffs between the United States and developing countries will certainly increase.

If accounting rate revenues decrease, and they are not able to increase local tariffs, the administrations of developing countries will not be able to reduce their international long distance tariffs. Lower tariffs in the U.S. will create a further incentive for callback, traffic distortions, and accounting rate payments to developing country administrations, which is the opposite of the objectives pursued by the FCC.

6. In Paragraph 52 of its Flexibility Order, dated December 13, 1996, the FCC recognizes the need to adapt its policies to reflect the unique conditions in developing countries. The "benchmark" proposal from the FCC disregards this approach and, instead, proposes to impose the same accounting rate level on all middle income countries in the world.
7. The telecommunications "liberalization" supported by the FCC must be done within the framework of international agreements (ITU, TWO), and must always respect each country's internal legislation.

## CONCLUSION

For the foregoing reasons, the FCC should not adopt the proposals contained in the Notice.

Respectfully submitted,

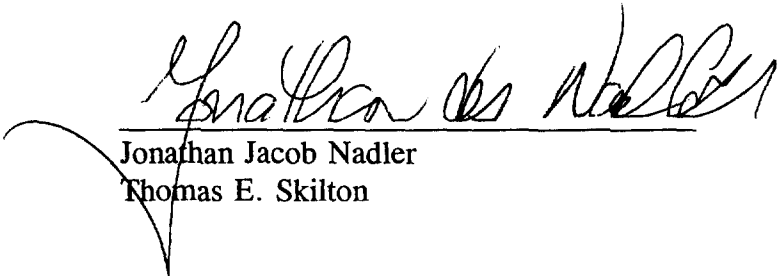


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## CERTIFICATE OF SERVICE

We do hereby certify that on this 7th day of February, 1997, we have caused a copy of the foregoing "Comments of the Hispanic-American Association of Research Centers and Telecommunications Companies" to be served by hand to the persons listed below.



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